HAS YOUR STATE SUFFICIENT JUDGES?

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To call a person "Judge," in the hearing of the average American citizen, especially if he be of an inquiring mind, is usually to invite the question, "Of what court is he judge?" and the further inquiry whether his court can hang a man or send him to the State Penitentiary, or whether it can deprive a citizen of his property? Some one has humorously observed that the judges of the past generation were usually severe and stern men, who "believed in hanging, hell fire, and castor oil." The judges of the appellate courts are likewise respected by all, but in them, dealing only in questions of law on appeal, the citizens do not take the same interest as they do in those judges whose everyday work in the course of the year, brings them in elbow touch with all grades, classes and conditions of our people.

It is, therefore, to the so-called trial judges, or, to properly designate them, the judges of the courts of general jurisdiction, that the inquiry, which is the title of this article, refers, and to the solution of which inquiry no universal rule can be laid down for every State. But the experience, whether satisfactory or not, of each State can help others in its solution.

All will agree with the plain statement that there should be provided a sufficient number of judges to properly transact the business of the courts, both civil and criminal. Yet what is a sufficient number to transact that business is a matter about which people can, and will conscientiously, differ, as each one will not have the same facts before him; and men of practical judgment decide matters with the light before them as they see it.

In these days of muckraking writers, inflaming the mind against a calm and deliberate consideration of public matters, it is oftentimes difficult to arrive at the facts concerning any public question. It is popular today to cry against the "Law's Delay," and generally to condemn the judicial system of America, some few going so far as to advocate recall of all public officials (Judges included), and that an absolute present-day majority rule (whose sympathies may change over night) be substituted for our system of representative government by the people, in which the minority is protected in its rights against oppression by the majority, while

the majority is given free rein to pass and enforce any law that does not override the fundamental law made by the people for their government and protection.

For the "Law's Delay" the writer (a lawyer) has no excuse to make, nor apology to offer. In numerous cases it exists; in the large majority of instances it can, and should be, corrected; and the means of correction, almost without exception, are within the power of the law-making body of each State, and can easily be provided. The scope of this article, and its broad subject, precludes discussing such delays as are incident to legal procedure, professional courtesy, appeal and error, expensive litigation, and long-protracted trials, yet later on the article will call attention to one fruitful source of the law's delay, especially in the larger cities and the older and more populous States east of the Mississippi river.

It is easy to find fault with and condemn an existing condition that does not in every way meet popular approval. That is the especial privilege of the demagogue and fault-finder, and almost the sole financial support and livelihood of the muckraking writer and lecturer.

The people justly honor, respect and follow one who not only points out defects in existing present-day affairs, but also suggests a practical remedy in each instance by which the people themselves may better the objectionable conditions. Therein lies the difference between a statesman or political economist on the one hand, and a demagogue or fault-finder on the other. The American people always try to be fair in deciding questions and their sober second thought, their deliberate judgment, is always better than the impulse of the moment.

What is a court of general jurisdiction, and how small a case can it try? The jurisdiction varies from any amount howsoever small in Maine, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, and Utah, to $500 in Connecticut, Rhode Island, and Texas. It is $20 in Virginia; $50 in Alabama, Alaska, Delaware, Hawaii, Kentucky, Louisiana, Maryland, Montana, Tennessee, and West Virginia; $100 in Arizona, Arkansas, District of Columbia, Florida, Georgia, Iowa, Massachusetts, Michigan, Minnesota, New Mexico, Ohio, South Carolina, South Dakota, and Washington; $200 in Illinois, Indiana, Mississippi, Nebraska, North Carolina, North Dakota, Oklahoma, Vermont, Wisconsin,

and Wyoming; $250 in Missouri; $300 in California, Colorado, Idaho, Kansas, and Nevada, and, as above stated, $500 in Connecticut, Rhode Island, and Texas. It is noticeable that nearly one-third have the $100 minimum, and nineteen have a greater, while eighteen have a lesser sum to confer jurisdiction.

The attached table (Table I) shows the population and the number of trial judges in the several States (including Territories) and the proportion of population to each judge:

TABLE I.

State.	Population.	Districts.	Judges.	Ch. Dists.	Chancellors.	City Courts.	City Judges.	Proportion of Population to Each Judge.
Alabama	2,138,095	16	18	5	5	20	26	43,634
Arizona	204,354	5	5					40,871
Arkansas	1,574,449	17	17	12	12			54,291
California	2,377,549	58	100					23,775
Colorado	799,024	13	21					38,049
Connecticut	1,114,756	—	12			5	5	63,422
Delaware	202,322	—	5	1	1			33,720
Dist. of Col.	331,069	—	6					55,178
Florida	751,139	11	11					68,285
Georgia	2,609,121	27	29			78	79	24,158
Idaho	325,594	9	12					27,133
Illinois	5,638,591	18	66			23	39	53,701
Indiana	2,700,876	63	63			11	18	33,332
Iowa	2,224,771	20	56					39,371
Kansas	1,690,940	38	41					41,242
Kentucky	2,289,905	34	40					57,248
Louisiana	1,656,388	30	35					47,325
Maine	742,371	—	8			2	2	74,237
Maryland	1,295,346	8	31					41,785
Massachusetts	3,366,416	—	28					120,229
Michigan	2,810,173	39	50					56,203
Minnesota	2,075,708	19	40					51,892
Mississippi	1,797,114	17	17	10	10			66,559
Missouri	3,293,335	36	59					55,819
Montana	376,053	13	21					17,907
Nebraska	1,192,214	16	29					41,111
Nevada	81,875	9	10					8,187
New Hampshire	430,572	—	5					86,114
New Jersey	2,537,167	9	16	—	8			105,715
New Mexico	327,301	8	8					40,912
New York	9,113,279	9	102					89,324
North Carolina	2,206,287	16	16					137,893
North Dakota	577,056	12	12					48,088
Ohio	4,767,121	30	102					46,736
Oklahoma	1,657,155	26	26					63,736
Oregon	672,765	13	20					33,638
Pennsylvania	7,665,111	56	100					76,651
Rhode Island	542,610	—	6					90,435

TABLE I—Continued.

State.	Population.	Districts.	Judges.	Ch. Dists.	Chancellors.	City Courts.	City Judges.	Proportion of Population to Each Judge.
South Carolina	1,515,400	12	12					126,283
South Dakota	583,888	12	12					48,657
Tennessee	2,184,789	17	21	10	11			70,477
Texas	3,896,542	73	73					53,377
Utah	373,351	7	12					31,112
Vermont	355,956	—	6					59,326
Virginia	2,061,612	31	31			21	21	39,641
Washington	1,141,990	22	44					25,932
West Virginia	1,221,119	23	24					50,879
Wisconsin	2,333,860	20	25			9	9	68,643
Wyoming	145,965	4	4					36,491
Alaska	64,356	4	4					16,039
Hawaii	191,909	5	8					23,989
Porto Rico	1,118,012	14	14					79,853
	93,346,543	.. 1,539	..	47	..	199		......

The total number of judges of general jurisdiction is 1,785, or an average of one for each 52.295 of population. If Alaska, Hawaii and Porto Rico be omitted the result is practically the same, or an average of one for each 52,287.

Of the fifty-two States and Territories it will be seen that forty have a single class of judges, who are designated as judges of courts by various names, some of which are Common Pleas (Pennsylvania and Ohio), Supreme Court (New York), District Court (California, Louisiana, and Texas), Circuit Court (Missouri) and Superior Court (North Carolina).

Six States (Alabama, Arkansas, Delaware, Mississippi, New Jersey, and Tennessee) have separate courts of equity, which are presided over by Chancellors. This is the old English idea, which prevailed there until the Judicature Act changed it in 1875. Of interest is the fact that two of the States mentioned were original English Colonies, as well as the fact that three of the four others were admitted to the Union prior to 1826, while Arkansas was admitted in 1836.

Seven States (Alabama, Connecticut, Georgia, Illinois, Indiana, Maine, Virginia, and Wisconsin) have provision for separate courts co-equal with their courts of general jurisdiction, which are limited to certain counties or cities. For instance, Virginia has a corporation court for each incorporated city having a population over 5,000. Georgia may have a city court for any county seat of

a county having a population of 10,000; Illinois has a Superior Court of eighteen judges for Cook County, and also twenty-two city courts in that many cities, besides its sixty-six judges of general jurisdiction.

Equally of interest is the widely varying number of inhabitants in each State to each judge—from one judge to every 8,187 of population in Nevada, to one judge for every 137,893 of population in North Carolina, as will be seen by reference to Table II:

TABLE II.

State.	Population* Per Judge.	State.	Population Per Judge.
Nevada	8,187	West Virginia	50,879
Alaska	16,089	Minnesota	51,892
Montana	17,907	Texas	53,337
California	23,775	Illinois	53,701
Hawaii	23,989	Arkansas	54,291
Georgia	24,158	Dist. of Columbia	55,178
Washington	25,932	Missouri	55,819
Idaho	27,133	Michigan	56,203
Utah	31,112	Kentucky	57.248
Indiana	33,332	Vermont	59,326
Oregon	33,638	Connecticut	63,422
Delaware	33,720	Oklahoma	63,736
Wyoming	36,491	Mississippi	66,559
Colorado	38,049	Florida	68,285
Iowa	39,371	Wisconsin	68,643
Virginia	39,641	Tennessee	70,477
Arizona	40,871	Maine	74,237
New Mexico	40,912	Pennsylvania	76,651
Nebraska	41,111	Porto Rico	79,858
Kansas	41,242	New Hampshire	86.114
Maryland	41,785	New York	89,324
Alabama	43,634	Rhode Island	90,435
Ohio	46,736	New Jersey	105,715
Louisiana	47.325	Massachusetts	120,229
North Dakota	48,088	South Carolina	126,283
South Dakota	48,657	North Carolina	137,893

It should be mentioned that while South Carolina has a high proportion of population to its twelve judges, yet as its Constitution provides for the appointment of special judges to hold courts, the proportion is greatly lessened in practical operation.

In North Carolina the number of judges has not been increased since 1901, when four were added, but the North Carolina Bar Association is now advocating an increase to twenty-four, while some urge that the number be placed at thirty-two. This last number would provide one judge for each 68,947 persons, which proportion would still be higher than that of forty-one other States.

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*Population as of June 1, 1910. Number of judges as of January 1, 1912.

The average population to each trial judge being 52,295, it is interesting to note that within a variation of 25 per cent above and below that proportion (namely, between 39,225 and 65,369), will be found twenty-four of the States, there being fourteen which have a greater proportion and fourteen a lesser proportion. As the population of the United States increased 21 per cent in the decade 1900 to 1910, there should be allowed 4.25 per cent on the above figures to approximate the 1912 population, which will raise the average to 54,517, or practically one trial judge for each 55,000 of population. This is very near the proportion existing in the District of Columbia.

It would be impracticable in an article like the present, to attempt to discuss the figures as to the several States in detail. Discussion will, therefore, be confined to a few observations on the number of trial judges in the States of New York and Pennsylvania.

New York State.

An analysis of the situation in New York State, in which there are one hundred and two judges of the Supreme Court (theoretically one for each 89,324 population), is of interest, as will be seen by the following table, giving the proportion of population for each judge.

As the nine districts of the Supreme Court are grouped into four departments for appellate division work, to which seven judges are assigned to the first and second departments (two are temporarily assigned to the second department, owing to increased work of that department), and five to the third and fourth departments, there are twenty-four Supreme Court judges taken out of actual trial work. This leaves only seventy-eight for trial work, which practically results in having one judge for every 116,837 of population—a proportion only exceeded by three other American States, namely, Massachusetts, South Carolina, and North Carolina.

To show the present inequality of the burdens placed upon some of the judges, the following table showing the number of judges in the several districts, the present number assigned to the appellate division work, and the number remaining in each district for the regular trial work, and the proportion of population to each Supreme Court judge, as well as to each one provided for trial purposes is of interest:

TABLE III.

District.	No. of Judges.	Appellate Work.	Trial Work.	Population per Judge. All.	Trial.
1	31	4	27	89,113	102,315
2	20	4	16	109,531	136,914
3	6	1	5	86,541	103,849
4	7	3	4	76,162	138,259
5	8	1	7	72,963	83,958
6	6	3	3	67,275	134,550
7	7	3	4	88,542	154,949
8	12	4	8	77,914	116,872
9	5	1	4	109,651	137,064
	102	24	78	89,324	116,837

The present Constitution (1894) of New York State provides that there may be one judge in Greater New York for each 80,000 population or fraction over 40,000, and in the remainder of the State one judge for each 70,000 of population or fraction over 35,000.

If this maximum of the State Constitution were carried into effect by the legislature, and the judges provided in accordance with these provisions, and the assignments to the appellate division remain as they are at present, then instead of the figures in Table III showing the varying proportion of trial judges actually in the several districts—from one judge to every 83,958 to as high as one judge to each 154,949—the number would vary from one judge to every 64,906 to one judge to every 100,912; theoretically, one judge for each 70,102, or an actual average for trial work of one for each 85,974, as will be seen from Table IV:

TABLE IV.

District.	No. Permitted by Constitution.	Appellate Work.	Trial Work.	Population Per Judge	Increase Over Present Number.
1	34	4	30	92,084	3
2	27	4	23	95,244	7
3	9	1	8	64,906	3
4	9	3	6	92,173	2
5	10	1	9	65,300	2
6	7	3	4	100,912	1
7	10	3	7	88,542	3
8	15	4	11	84,997	3
9	9	1	8	68,532	4
	130	24	106	70,102 85,974	28

Greater New York has a population of 4,766,883, of which 2,331,542 is in the Borough of Manhattan, which has thirty-one Supreme Court judges, while the remaining boroughs have eigh-

teen; but as eight judges are assigned to the appellate division, only forty-one are left for trial purposes. This compares poorly with the State of Ohio, with only 238 more people, 45 per cent of whom are rural, which has 102 judges. So, also, the States of Maine, New Hampshire, Vermont, and Massachusetts, combined, have only 100,000 additional population and forty-nine trial judges; Texas, with 900,000 less population, has seventy-three judges; the States of Maryland, Virginia, and West Virginia, with 90,000 less aggregate population, have 107 judges; while the three Pacific Coast States of Washington, Oregon, and California, with 550,000 less population, have 164 judges, or just four times the number of trial judges in Greater New York.

Pennsylvania.

Pennsylvania, with a population of 7,665,111, has one hundred judges of general jurisdiction, or one for each 76,651 (which seems a liberal provision in comparison with eight other States), and also has an Orphans' Court in the ten largest counties, with sixteen Orphans' Court judges; but as this article relates only to trial judges, they are not included in these figures. This average, however, bears very unequally over the State, especially since Philadelphia County, with 1,549,008 population, has fifteen judges, or one for each 103,267, and Allegheny County (comprising Pittsburgh), with 1,018,463 population, has twelve judges, or one for each 84,872. The seventy-three judges for the remainder of the State, then, each represent an average of 69,830 citizens. If Philadelphia and Pittsburgh were provided with a judge for each 70,000 of population, then the former should have twenty-two and the latter fifteen. On January 3, 1912, the Supreme Court of Pennsylvania upheld the constitutionality of a court of limited jurisdiction for Pittsburgh, and immediately there was talk of creating such a court for Philadelphia to relieve the crowded dockets of the Common Pleas Courts. It has been announced that the new court of limited jurisdiction will have eight judges, in order to relieve the congested Common Pleas dockets, and that the Pennsylvania Bar Association Committee will discuss the same in their meeting this year. Would not the creation of additional judges in the present courts of these two cities, in the same proportion as, and no greater than, judges are provided in the re-

maining sixty-five counties of that State, relieve the courts of those two cities, and enable litigants to get more prompt trials?

It has been stated that parties in Philadelphia courts are twelve to eighteen months in reaching jury trials after bringing their suits. To avoid just such delays, many suits, especially against the traction companies, are now brought in the adjoining counties, and some of these dockets are beginning to be congested on account of increased litigation.

The eight counties nearest Philadelphia have trial judges in the following proportions to their population:

TABLE V.

County.	Population.	Judges.	Population Per Judge.
Bucks	76,530	1	76,530
Montgomery	169,590	2	84,795
Delaware	117,906	2	58,953
Chester	109,213	2	54,609
Northampton	127,667	2	63,834
Lehigh	118,832	1	118,832
Berks	183,222	2	91,611
Lancaster	167,029	2	83,515

Three of these eight—Berks, Lancaster, and Montgomery—have separate Orphans' Courts.

Examining these figures and contrasting them with each other, it is very clear how much more liberal provision has been made for the judicial settling of disputed matters in these counties than in Philadelphia, where the ratio is one trial judge for each 103,267 of population. And the contrast becomes stronger when it is stated that from one-fourth to one-third of the population of Bucks, Montgomery, and Delaware counties transact business daily in Philadelphia. As a matter of fact, their large proportion of agricultural and residential population is not nearly so given to litigation, as is a commercial and trading people like that of Philadelphia.

Those of us who bewail the methods and men of the present generation, when they are contrasted with a past generation, should be honest and accurate in statements of fact, for while glittering generalities are pleasant and generally carry weight, can the speaker vouch for the accuracy of that statement, and will he stand or fall by an investigation of the facts?

Today, so often, do we hear of the judges, mighty legal giants, of a past generation, and how they dispatched business, kept their

dockets clear, and never allowed a litigant to be delayed, and that cases were brought to trial so soon after being brought.

When were those times? How many cases did the judges have to try? What was the population of their districts? And how many of that population were engaged in agriculture and other pursuits, which lead so seldom to litigation? A fair answer to some of these questions is shown in the following tables of Philadelphia and Alleghany counties.

In former years the proportion of each judge to the population has been as follows:

TABLE VI.

A. Philadelphia (County).

Year.	Population.	No. of Judges.	Proportion.
1850	408.762	7	58.395
1860	565.529	7	80,761
1870	673,726	9	73,747
1880	846,984	12	70,582
1890	1,046,964	12	87,247
1900	1,293,697	12	107,808
1910	1,549,008	15	103,267

B. Pittsburgh (Allegheny County).

1880	335,759	6	59.293
1890	551,959	6	91,993
1900	775,058	9	86.117
1910	1,018,463	12	84,872

C. State of Pennsylvania (entire).

1880	4,282,891	72	59,485
1890	5,258,113	80	67,635
1900	6,302,115	82	76.855
1910	7,665,111	100	76,651

Philadelphia lacks only 25,000 of having as many people as the State of Arkansas, which has twenty-nine judges. It has nearly one-third the population of Ohio, which has seven times as many judges. Again, the combined population of Maryland and the District of Columbia only exceed it by 25,000, and these two territorial divisions have thirty-seven judges to Philadelphia's fifteen; and the States of Maine, New Hampshire, and Vermont lack 20,000 of equaling its population, yet they have nineteen judges.

But why further cite statistics from the past, for it is the present in which we live. Academically, the statistics are interesting; but the question of a sufficient number of trial judges to transact the business of the courts is a practical one, and must be met and considered, not in the light of the needs of the past, but of the present.

Inferior Courts.

Some persons argue for the creation of additional courts, local in their character and nature, combining all of the powers of a justice of the peace with some of the powers of a court of general jurisdiction, arguing that it would be less expensive and more convenient. They are variously called County, Municipal, or Inferior Courts.

Eighteen States (including Hawaii Territory) have County or Municipal courts, which combine the jurisdiction of the magistrate's court with some limited jurisdiction of the courts of general jurisdiction. In Colorado, Massachusetts, and New York this jurisdiction is fixed at $2,000; in Connecticut, Illinois, Nebraska, Oklahoma, South Dakota, and Texas, $1,000; in Florida, New Jersey, Oregon, and Rhode Island, $500; in Georgia and Hawaii, $300; in Kentucky, $200, and in New Hampshire, $100. The eighteenth State is Wisconsin, and the jurisdiction given its county courts varies from $1,000 to $5,000,000 (Douglas County). In this article all of the Wisconsin courts having jurisdiction in civil cases over $10,000 are counted as courts of general jurisdiction.

While these courts may work well in many States, the difficulty has been that generally litigants are not satisfied to have their matters determined finally by such inferior courts, and then follows an appeal to the court of general jurisdiction, and there results the expense of two trials instead of one.

Besides being on a plane with a justice of the peace in many matters, and only equal to the court of general jurisdiction in a few matters, and in all cases subject to its review, these courts are soon classed by the people as inferior courts, on the same level with the justice's court; and they avoid them when practicable, to go to the general trial court, for no court can be both flesh and fowl; it must have a distinctive character.

Other Jurisdictions.

It is of interest to see how various State legislatures have provided judges for leading centers of their States, the proportions being figured out on the population of each county or judicial district and not alone on the city census. The following list of twenty-five cities, in twenty-two different States, all of which, excepting four (Dallas, Tex.; Houston, Tex.; Portland, Me., and Wilmington, Del.), had more than 100,000 population within their

city limits in 1910, shows a wide variation, just as do the several States:

TABLE VII.

City.	Population Per Judge.	City.	Population Per Judge.
Atlanta, Ga.	29,622	Minneapolis, Minn.	47,640
Baltimore, Md.	55,848	New Orleans, La.	48,439
Birmingham, Ala.	32,354	Portland, Me.	57,406
Cincinnati, Ohio	51,192	Portland, Ore.	45,232
Chicago, Ill.	77,583	Pittsburgh, Pa.	84,872
Detroit, Mich.	88,598	Richmond, Va.	31,907
Dallas, Tex.	34,937	St. Paul, Minn.	37,278
Denver, Col.	42,676	St. Louis, Mo.	57,252
Houston, Tex.	28,924	San Francisco, Cal.	34,743
Indianapolis, Ind.	43,943	Seattle, Wash.	31,626
Louisville, Ky.	43,820	Washington, D. C.	55,178
Los Angeles, Cal.	42,011	Wilmington, Del.	33,720
Milwaukee, Wis.	72,198		

Having considered how various commercial centers are supplied with trial judges, it is also of interest to note the situation in some cities, bearing well-known geographical names, often referred to in the daily press, as follows:

TABLE VIII.

City.	Population Per Judge.	City.	Population Per Judge.
Annapolis, Md.	29,531	Lexington, Ky.	47,715
Alexandria, Va.	36,725	Medicine Lodge, Kan.	49,206
Beaumont, Tex.	19,091	Ogden, Utah.	23,968
Breathitt County, Ky.	49,208	Osawatomie, Kan.	38,312
Cripple Creek, Colo.	27,761	Oakland, Cal.	41,022
Calaveras County, Cal.	9,171	Palm Beach, Fla.	39,073
Deadwood, S. D.	37,327	Reno, Nev.	10,123
El Paso, Tex.	26,309	Sioux Falls, S. D.	29,631
French Lick, Ind.	34,637	Salt Lake City, Utah	29,510
Hot Springs, Ark.	34,942	Tombstone, Arizona	41,497
Helena, Mont.	21,853	Tonopah, Nev.	7,513
Kalamazoo, Mich.	60,427	Yuba City, Cal.	6,326
Leadville, Colo.	15,788	Yuma, Arizona	27,419
Livington, Mont.	14,760	Zion City, Ill.	23,678

Summarizing the question under discussion, it may be said that no uniform rule exists among the fifty-two separate jurisdictions, but that conditions everywhere sufficiently differ to require them to be settled in the light of the local surroundings, standards and ideals of the people among whom the courts are located.

Some of the States need additional judges, and are badly in need of them; others seem to be bountifully, perhaps too bountifully, supplied. California, as was seen in Table II, has one judge for each 23,775 of population, 40 per cent of which is rural. Of the

number of persons per judge, approximately 600 to 750 are Chinese, and 150 are Indians; and estimating one male voter to every five of population, the State has one judge for every 4,575 American male citizens (both foreign born and native), whether able-bodied or not. This seems to be too many trial judges to the population, and such an observation seems borne out by the fact that California is the first (and so far as the writer's knowledge extends, the only) American State to include her judges in the recall law recently adopted. The agitation for the recall of judges seems largely confined to the Western States, and among them, to those well up in Table II. The sudden change of sentiment among a very large number of the population of Los Angeles, early in December, 1911, after certain developments in the trial of the dynamiting cases, shows the grave danger of the recall system to the fair and impartial administration of the law. If that change in opinion was for the better, the next one or more may, and probably will, be for the worse.

What proportion of population there should be to each trial judge can only be determined by the people of each community and State, as the State creates them. If her citizens are inadequately provided for in judicial facilities, it is her duty to remedy the defect, and likewise it is the duty of every citizen to help in the matter. Seven hundred years ago the Magna Charta of King John forever secured to the Anglo-Saxon people certain well-known rights, therein enumerated, one of which was: "We will sell to no man, we will deny no man, or defer, right or justice," and that assurance is as sacred and valuable to the people of today as it ever was in the past.

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